

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2128 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AMRATLAL P GAJJAR

Versus

STATE OF GUJARAT

Appearance:

MR SURESH M SHAH for Petitioner
Mr N.D.GOHIL, Asst. Govt. PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 3, 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/07/2000

ORAL JUDGEMENT

1. The petitioner herein has challenged the order
passed by the Deputy Collector in RTM case No. 38 of

1986 and the subsequent order passed by the Additional Chief Secretary, Revenue (Appeals) on 1.2.1989 in SRD/Order/Danu 3/88.

2. The facts leading to this case are:

2.1 Survey No. 26 of village Rampar of Taluka Jamkandorna of Rajkot district, admeasuring 9 acres and 31 gunthas of land was owned by Harijan Mula Govind as a new tenure land. Said Mula Govind had taken loan from Boria Cooperative society which he could not repay and, therefore, land came to be ultimately auctioned by the Special Recovery Officer of Rajkot. In that auction, petitioner purchased the said land as his bid was accepted. By virtue of that auction sale, entry No.557 was made in village form No.6. That entry was made on 6.10.1978 and the same was certified on 19.4.1979. Thereafter, the land is being cultivated by the present petitioner. In November, 1986, a show cause notice was issued upon the petitioner to show case why mutation entry No.557 should not be cancelled as the petitioner was not an agriculturist and as the land was of new tenure.

2.2 The petitioner, therefore, approached the authority and contended that he had purchased the land in auction. He was not aware that the land is of new tenure. He does not own agricultural land but his forefathers were agriculturists. Ultimately, the impugned order came to be passed by the Deputy Collector on 25.6.1987 holding that because the petitioner is not an agriculturist and because he is not able to produce reliable evidence to indicate that he is an agricultural labourer, there is breach of provision of Section 54 of then Saurashtra Tenancy Land Settlement and Laws (Saurashtra Gharkhed Ordinance) and, therefore, entry No. 557 is cancelled, in exercise of powers under Rule 108 (6) of the Land Revenue Rules. A direction was issued to the Mamlatdar, Jam-Kandorna to implement the order by cancelling that entry.

2.3 This order was carried in appeal before the Collector who turned down the appeal. The order was then carried in revision before the Additional Chief Secretary who also rejected the revision application by his order dated 1.2.1989. While rejecting the revision application, the Additional Chief Secretary cancelled the auction deal and directed proceedings for breach of condition. Aggrieved by this order, the petitioner has approached this Court.

3. The case of the petitioner is that he has purchased the land in an auction conducted by the revenue department. He was not aware about the land being of new tenure. If the land was not purchasable by the petitioner because of he not being an agriculturist, the authority ought not to have accepted his bid and once having accepted the bid, the authority could not have challenged that after lapse of about 8 years. The petitioner has invested money to improve the land .He has been cultivating the land and if the order is upheld,it would be inequitable. It is further contended that the Deputy Collector had only issued notice for cancellation of entry No.557 by exercising suo motu powers. The Additional Chief Secretary could,therefore, have restricted his order only to either confirming or setting aside that order.Instead, he has passed an additional order of cancelling the auction deal, which is not within his jurisdiction . No action for cancellation of auction deal has ever been taken under the relevant law. No audience for this purpose is given and,therefore, the said order is bad.

4. Mr. Shah appearing for the petitioner has forcefully advanced the above arguments and urged that petition may be allowed.

5. Mr.Gohil, learned AGP submitted that the auctioning authority may have committed an error but if the petitioner is not entitled to purchase the land , the sale has to be set aside and,therefore,order was passed. Therefore, the petition may be dismissed.

6. Having regard to the rival side contentions, it may be noted that there cannot be any dispute about the fact that if the transaction has taken place which is not perfectly legal or proper, it can be set aside by the authority concerned. These powers are to be exercised within reasonable time and in accordance with law ifn no time limit is prescribed therefor. In the instant case, neither the order is found to be within reasonable time nor it is in accordance with law as would be and therefore,it cannot be upheld.

7. The auction sale on the basis of which entry was made was conducted on 29.4.1978 and on that basis, entry was made which was certified on 19.4.1979. After lapse of about 7-8 years, in November, 1986, a notice was issued calling upon the petitioner to explain why entry No.557 should not be cancelled and this is the impugned action. Thus, the impugned action is initiated after lapse of about 8 years. Whether this can be said be

reasonable ? In this regard, decision of the Apex Court in the case of Mohmed Kavi Mohmed Amir vs. Fatima Ibrahim, 1997 SAR (Civil) SC 783 may be profitably referred to. It was held therein that where a power is given to the statutory authority without prescribing any time limit, it does not mean that it can be exercised at any time. Such power may be exercised within reasonable time. In that case, inquiry under section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 was initiated. Entry was made in February 1973 which was taken in inquiry in 1976 and it was held by the Apex Court that the powers were not exercised by the Mamlatdar within reasonable time. In the instant case, there is lapse of 8 years and, therefore, it cannot be said that powers are exercised by the authority within reasonable time. A similar view is taken by this court in the case of Jiviben Kalaji Bapuji vs. State of Gujarat and others, 1998 (2) GLH 556.

8. Now, if the merits of the case are examined, it may be noted that the petitioner purchased the land in auction conducted by the Special Recovery Officer. There is nothing to indicate as to what were the conditions of auction and whether those conditions were made known to the petitioner. But it can be legitimately inferred that the auctioning authority was aware of the fact about the land being of new tenure and also about the provisions of law that land can be purchased only by an agriculturist. If the auctioning authority has accepted the bid of the petitioner and land is sold, that transaction cannot be challenged by the authority after lapse of about 8 years particularly when there is no allegation whatsoever about any fraud or mala fides on the part of the petitioners.

9. It may further be noted that suo motu powers were exercised by the Deputy Collector under the Land Revenue Code for cancelling entry No. 557 and in his order, he has only directed cancellation of that entry. Against this, Additional Chief Secretary by his impugned order in revision preferred by the petitioner, has set aside the auction sale for which action no proceedings were initiated. Till the order of the Additional Chief Secretary, auction sale was nowhere the subject matter of any challenge and, therefore, Additional Chief Secretary could not have passed the order cancelling / setting aside the auction sale. In fact, no audience can be said to have been given to the petitioner on this count. The revision was only in respect of cancellation of entry No. 557 and, therefore, the order impugned in this petition passed by the Additional Chief Secretary cannot be said

to be in accordance with law. Likewise, the order of the Deputy Collector also cannot be said to be in accordance with law as it suffers from the vice of delayed action as well as defect that without setting aside the auction sale, entry could not have been cancelled. In fact, if the land is purchased in public auction, requisite entry is required to be made by virtue of provisions of the Land Revenue Code.

10. It was contended by Mr.Gohil that the petitioner has not produced anything to indicate that he is a farmer and, therefore, if he wanted to purchase the land, he ought to have obtained permission therefor. As discussed above, there is nothing to indicate that in the conditions of auction, it was clarified that non-agriculturist will not be entitled to purchase land. Again,as discussed above, the auctioning authority was presumably aware about the provisions of law and the bid having been accepted, this contention raised by Mr.Gohil cannot be accepted as the respondents are now estopped from taking such contention by their conduct.

11. Petition deserves to be allowed for the reasons stated above. Petition is allowed. Impugned orders dated 25.6.1987 passed by the Deputy Collector and the Additional Chief Secretary, dated 1.2.1989 are hereby quashed and set aside. Rule made absolute. No costs.

(A.L.Dave,J.)

parekh